## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

FACILITY GUIDELINES	)	
INSTITUTE, INC.,	)	
	)	
Plaintiff,	)	
	)	
V.	) Case N	lo.:
	)	
UPCODES, INC.,	)	
	)	
Defendant.	)	
	)	

## **DECLARATION OF LINDSEY M. BRUNO**

- I, Lindsey M. Bruno, declare as follows:
- 1. My name is Lindsey M. Bruno. I am an attorney with the law firm of Lewis Rice LLC and counsel of record for Plaintiff Facility Guidelines Institute, Inc. ("FGI") in the above-captioned matter. I am a member in good standing of the State Bars of Missouri and Illinois.
- 2. I make this declaration in support of FGI's Motion for Preliminary Injunction in the above-captioned matter. I have personal knowledge of the facts set forth below, and, if called upon as a witness, I could and would testify to such facts under oath.
- 3. I have reviewed the website operated by Defendant UpCodes, Inc. at <a href="https://up.codes">https://up.codes</a> (the "UpCodes Website").
- 4. A true and accurate copy of a webpage from the UpCodes Website listing the codes available for review and download is attached hereto as <u>Exhibit E</u> and is available at <a href="https://up.codes/codes/general">https://up.codes/codes/general</a> (last visited December 5, 2022). This webpage lists FGI "Guidelines for Design and Construction of Hospitals 2018", FGI "Guidelines for Design and

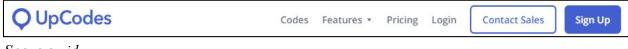
Construction of Outpatient Facilities 2018", and FGI "Guidelines for Design and Construction of Residential Health, Care, and Support Facilities 2018". *See* page 5 of 5.

- 5. A true and accurate copy of a webpage from the UpCodes Website listing the FGI "Guidelines for Design and Construction of Hospitals 2018" is attached hereto as <a href="Exhibit F">Exhibit F</a> and is available at <a href="https://up.codes/viewer/michigan/fgi-hospitals-2018">https://up.codes/viewer/michigan/fgi-hospitals-2018</a> (last visited December 5, 2022). Individual sections of the FGI "Guidelines for Design and Construction of Hospitals 2018" are available for viewing on the UpCodes Website. See, e.g., <a href="https://up.codes/viewer/michigan/fgi-hospitals-2018/chapter/1.1/introduction#1.1">https://up.codes/viewer/michigan/fgi-hospitals-2018/chapter/1.1/introduction#1.1</a> (last visited December 5, 2022), attached hereto <a href="https://up.codes/viewer/michigan/fgi-hospitals-2018/chapter/1.1/introduction#1.1">https://up.codes/viewer/michigan/fgi-hospitals-2018/chapter/1.1/introduction#1.1</a> (last visited December 5, 2022), attached hereto <a href="https://up.codes/viewer/michigan/fgi-hospitals-2018/chapter/1.1/introduction#1.1">https://up.codes/viewer/michigan/fgi-hospitals-2018/chapter/1.1/introduction#1.1</a> (last visited December 5, 2022), attached hereto
- 6. A true and accurate copy of a webpage from the UpCodes Website listing the FGI "Guidelines for Design and Construction of Outpatient Facilities 2018" is attached hereto as <a href="Exhibit H">Exhibit H</a> and is available at <a href="https://up.codes/viewer/nebraska/fgi-outpatient-facilities-2018">https://up.codes/viewer/nebraska/fgi-outpatient-facilities-2018</a> (last visited December 5, 2022). Individual sections of the FGI "Guidelines for Design and Construction of Outpatient Facilities 2018" are available for viewing on the UpCodes Website.

  See, e.g., <a href="https://up.codes/viewer/nebraska/fgi-outpatient-facilities-2018/chapter/">https://up.codes/viewer/nebraska/fgi-outpatient-facilities-2018/chapter/</a>
  <a href="https://up.codes/viewer/nebraska/fgi-outpatient-facilities-2018/chapter/">https://up.codes/viewer/nebraska/fgi-outpatient-facilities-2018/chapter/</a>
- 7. A true and accurate copy of a webpage from the UpCodes Website listing the FGI "Guidelines for Design and Construction of Residential Health, Care, and Support Facilities 2018" is attached hereto as Exhibit J and is available at <a href="https://up.codes/viewer/tennessee/fgi-residential-facilities-2018">https://up.codes/viewer/tennessee/fgi-residential-facilities-2018</a> (last visited December 5, 2022). Individual sections of the FGI "Guidelines for Design and Construction of Residential Health, Care, and Support Facilities 2018" are available for viewing on the UpCodes Website. See, e.g., <a href="https://up.codes/viewer/tennessee/fgi-residential-reside

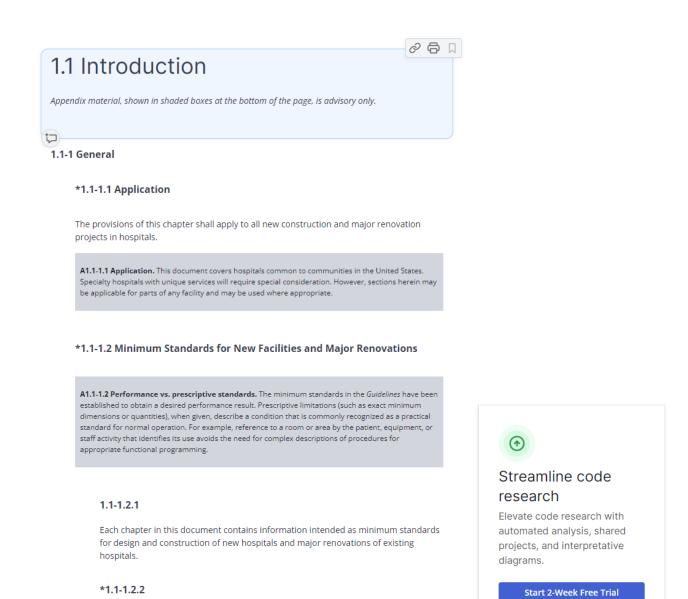
<u>facilities-2018/chapter/1.1/introduction#1.1</u> (last visited December 5, 2022), attached hereto Exhibit K.

- 8. In addition to displaying the 2018 FGI Guidelines on the UpCodes Website, UpCodes offers a "code compliance platform" with additional "premium" features at various pricing. According to the UpCodes Website, the paid version includes various reference, research, and collaboration tools, notable among them being a search function, code updates, local document styling, and code diagrams. *See, e.g.*, <a href="https://up.codes/pricing">https://up.codes/pricing</a> (last visited December 5, 2022), attached hereto as Exhibit L.
- 9. The top of the UpCodes Website constantly displays a "Contact Sales" banner to encourage visitors to sign up for the paid UpCodes services, as seen here:



See, e.g., id.

10. When a visitor clicks into the free section of the UpCodes Website, UpCodes displays a solicitation to start a free two-week trial of the paid UpCodes Premium service and to contact UpCodes' sales team, as seen here:



See, e.g., Exhibit G (available at <a href="https://up.codes/viewer/michigan/fgi-hospitals-2018/chapter/1.1/introduction#1.1">https://up.codes/viewer/michigan/fgi-hospitals-2018/chapter/1.1/introduction#1.1</a>).

**Contact Sales** 

Standards set forth in the Guidelines shall be considered minimum and do not

prohibit designing facilities and systems that exceed these requirements.

11. A true and correct copy of a webpage from the UpCodes Website titled "Our Fight to Keep the Law Free" is attached as <u>Exhibit M</u> and is available at <a href="https://up.codes/free-law">https://up.codes/free-law</a> (last visited December 5, 2022).

- 12. Attached as <u>Exhibit N</u> is a true and correct copy of the UpCodes Terms of Service, available at <a href="https://up.codes/tos">https://up.codes/tos</a> (last visited December 5, 2022).
- 13. According to an article published by TechCrunch, UpCodes had received over \$4 million in venture capital funding as of March 15, 2021. *See https://techcrunch.com/2021/03/15/building-code-compliance-startup-upcodes-gets-3-36m-in-pre-series-a-funding/* (last visited December 5, 2022), attached hereto as <u>Exhibit O.</u>

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct as I verily believe.

Executed on December 5, 2022.

Lindsey M. Bruno

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